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13 UNITED STATES DISTRICT COURT  
14 CENTRAL DISTRICT OF CALIFORNIA  
15

16 JAMIE BEECHUM, JEANNIE HART  
17 and MONICA HERVEY on behalf of  
18 themselves and all others similarly  
situated,

19 Plaintiffs,

20 v.

21 NAVIENT SOLUTIONS, INC., and  
22 DOES 1THROUGH 10,  
23 Defendants.

CASE NO: 2:15-cv-8239

CLASS ACTION

COMPLAINT FOR DAMAGES  
AND EQUITABLE AND  
INJUNCTIVE RELIEF

DEMAND FOR JURY TRIAL

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1 Plaintiffs Jamie Beechum, Jeannie Hart and Monica Hervey bring this action  
2 against Defendant Navient Solutions, Inc., on behalf of themselves and all others  
3 similarly situated (the “Class,” as defined further in ¶ 101), and based on their  
4 knowledge, the investigation of counsel and information and belief, allege as  
5 follows:

## 6 I. INTRODUCTION

7 1. Plaintiffs have been charged interest above 18% per annum on their  
8 private credit student loans by Defendant Navient Solutions, Inc. (“NSI”) or its  
9 predecessors. Each has been charged interest over 13% per annum within the past  
10 three years, and two are currently being charged interest above 13% - the lowest rate  
11 they have been charged since obtaining their loans over ten years ago.

12 2. These rates are usurious under the California Constitution and the  
13 California Usury Law, which prohibit charging interest at an annual rate exceeding  
14 10% per annum for loans used primarily for such things as educational expenses,  
15 except when loans are made by a bank.

16 3. Plaintiffs’ loan contracts identified the lender as Stillwater National  
17 Bank and Trust Company (“Stillwater”), a national bank located in Stillwater,  
18 Oklahoma. Unbeknownst to the Plaintiffs, however, Stillwater was a nominee.  
19 Stillwater did not make the loans and was not in fact the actual lender. The loans  
20 were made by the Student Loan Marketing Association (“SLMA”), which was the  
21 actual lender.

22 4. The SLMA originated, underwrote and funded the loans under a  
23 confidential agreement, the ExportSS® Agreement, between the SLMA and  
24 Stillwater. The ExportSS® Agreement further provided that Stillwater was required  
25 to sell the loans to the SLMA at cost within 90 days of being funded. This  
26 arrangement allowed the SLMA to create the false impression that the loans were  
27 made by Stillwater and therefore exempt from the California usury laws. In truth  
28

1 and in fact, the SLMA made the loans and was the lender, and used Stillwater as a  
2 nominee in order to evade compliance with California state law.

3 5. This arrangement enabled the SLMA to make high-interest private  
4 loans to students attending for-profit schools without the scrutiny of any regulatory  
5 body. The SLMA was not concerned with whether the students would be able to  
6 repay the loans because the SLMA charged borrowers a supplemental fee that was  
7 used to fund insurance on the loans in favor of the SLMA. As a result, when a  
8 borrower defaults, the SLMA is paid in full on the loan, including principal and  
9 interest, by the borrower-financed insurance, although repayment in full is still due  
10 from the borrower.

11 6. The SLMA made thousands of loans to California borrowers using  
12 Stillwater as the nominee lender.

13 7. The loans were and continue to be serviced by a SLMA subsidiary, or a  
14 successor entity, which is now Defendant Navient Solutions, Inc. (“NSI”).

15 8. NSI and its predecessors collected, and continue to collect, millions of  
16 dollars to which they were not, and are not, entitled.

17 9. Because the substance of the transaction establishes that the loans were  
18 made by the SLMA, and not by a national bank, all interest charged on Plaintiffs’  
19 loans at a rate exceeding 10% per annum was and is usurious and unlawful.  
20 Plaintiffs, and the Class, are entitled to treble damages for interest paid within one  
21 year of bringing suit that was charged at a rate exceeding 10% per annum; the return  
22 of all interest previously paid that was charged at a rate exceeding 10% per annum;  
23 and injunctive relief prohibiting Defendant NSI from charging interest at a rate  
24 exceeding 10% per annum.

## 25 26 **II. PARTIES**

27 10. Plaintiff Jamie Beechum is a California citizen residing in Los Angeles  
28 County, California. Plaintiff Beechum applied for and obtained a private credit

1 student loan in May 2004 while a citizen and resident of the State of California by  
2 signing a loan application that identified Stillwater National Bank and Trust  
3 Company as the lender. The interest rate on her loan has been above 18% per  
4 annum and has never been below 13.125% per annum, which is the current rate.  
5 Plaintiff Beechum has paid interest on the loan. The loan remains outstanding.

6 11. Plaintiff Jeannie Hart is an Oregon citizen residing in Multnomah  
7 County. Plaintiff Hart applied for and obtained a private credit student loan in 2002  
8 while a citizen and resident of the State of California by signing a loan application  
9 that identified Stillwater National Bank and Trust Co. as the lender. The interest  
10 rate on her loan has been above 18% per annum and has never been below 13.125%  
11 per annum, which is the current rate. Plaintiff Hart has paid interest on the loan.  
12 The loan remains outstanding.

13 12. Plaintiff Monica Hervey is a California citizen residing in Los Angeles  
14 County, California. Plaintiff Hervey applied for and obtained private credit student  
15 loans in 2003 and 2004 while a citizen and resident of the State of California by  
16 signing loan applications that identified Stillwater National Bank and Trust Co. as  
17 the lender. The interest rates on her loans have been above 18% per annum and she  
18 has been charged interest at a rate exceeding 10% per annum within the last three  
19 years. Plaintiff Hervey has paid interest on the loans that was charged at a rate  
20 above 10% per annum. The loans remain outstanding.

21 13. **Defendant Navient Solutions, Inc.** (“Navient Solutions” or “NSI”) is a  
22 Delaware Corporation, and is a wholly owned subsidiary of Navient Corporation.  
23 NSI is the successor entity to Sallie Mae, Inc. (“SMI”), which serviced Plaintiffs’  
24 private credit student loans prior to NSI. The entity that serviced Plaintiffs’ loan  
25 prior to SMI, Sallie Mae Servicing, LLP, was a subsidiary of the SLMA, and was  
26 merged into Sallie Mae, Inc. Thus, from its inception to the present, NSI or one of  
27  
28

1 its predecessors has serviced Plaintiffs' private credit student loans for which  
2 Stillwater was identified as the original lender.<sup>1</sup>

3 14. NSI charged Plaintiffs and Class members interest at a rate exceeding  
4 10% per annum, and obtained payments from Plaintiff and Class members that  
5 included interest that was charged at a rate exceeding 10% per annum.

6 15. **Doe Defendants 1 through 10** are the trusts or other entities to which  
7 Plaintiffs' loans have been assigned, and are the current nominal owners of the  
8 loans. Plaintiffs have never been told the name of the trust(s) or other entities that  
9 own their loans. Plaintiffs asked Defendant NSI what entity owned their loans and  
10 were told it was NSI or that it was "Sallie Mae" or that the representative could not  
11 provide that information. As a result, the true identities of the loan owners are  
12 unknown to Plaintiffs. Plaintiffs will amend this complaint to add their true names  
13 and capacities when they become known.

### 14 15 **III. JURISDICTION AND VENUE**

16 16. Jurisdiction of this Court is proper under 28 U.S.C. § 1332 as there is  
17 diversity of citizenship between the parties. Plaintiffs are citizens of California and  
18 Oregon. Defendant Navient Solutions, Inc. is incorporated in the State of Delaware  
19 and has its primary offices in Newark, Delaware.

20 17. Upon information and belief, the amount in controversy exceeds  
21 \$5,000,000 for Plaintiffs and the Class collectively, exclusive of interest and costs, by  
22 virtue of the revenue and profits reaped by Defendants from their transactions with  
23 Plaintiffs and the Class as a direct and proximate result of their wrongful conduct,  
24 and by virtue of the injunctive and equitable relief sought.

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26  
27 <sup>1</sup> All subsequent references in this Complaint to "NSI" include its  
28 predecessors in interest, SMI and Sallie Mae Servicing, LLP.

1           18. The total number of Class members is likely to be in the thousands if  
2 not tens of thousands.

3           19. Venue is proper within this judicial district pursuant to 28 U.S.C.  
4 § 1391(b) and (c). Defendant NSI transacts business within this district. A  
5 substantial portion of the underlying transactions and events complained of  
6 occurred in this district, and affected persons reside or resided, in this district.  
7

#### 8 **IV. FACTUAL ALLEGATIONS**

##### 9 **A. The California Constitution and the California Usury Law Prohibit** 10 **Non-Bank Lenders From Charging Interest At a Rate Exceeding 10%** 11 **Per Annum**

12           20. The California Constitution, art. XV, § 1, sets the maximum rate of  
13 interest at 10% per annum for loans of money used primarily for personal, family, or  
14 household purposes, such as loans used to pay for educational expenses. Only  
15 banks licensed under the laws of the United States of America, California, or  
16 another state are exempt from this limitation. See Cal. Const., art. XV, § 1  
17 (providing that loans “made by ... any bank created and operating under and  
18 pursuant to any laws of [California] or of the United States of America” are not  
19 subject to the usury limit); Calif. Fin. Code § 1675 (exempting “[a]ny foreign (other  
20 state) state bank” from the interest rate restrictions of Cal. Const., art. XV, § 1.

21           21. California’s statutory proscription against usury is set forth in what is  
22 collectively referred to as the “Usury Law,” an un-codified Initiative Measure  
23 adopted nearly 100 years ago which is set forth in three sections. See Cal. Civ. Code  
24 § 1916-1 through 1916-3. In accordance with the California Constitution, the  
25 California Usury Law limits the interest rate on loans of money used primarily for  
26 personal, family, or household purposes to 10% per annum for non-exempt lenders.

27           22. California law recognizes that the substance of a transaction, not its  
28 form, determines whether a loan is subject to California’s usury laws.

**B. SLMA Privatization**

23. The SLMA was created pursuant to federal statute and chartered by the federal government as a government sponsored enterprise (“GSE”). The SLMA was prohibited by statute from originating loans.

24. In or about 1994, Congress required the SLMA to transition to a wholly private company no later than September 30, 2008.

25. As part of the transition, various segments and subsidiaries of the SLMA were acquired by the SLM Corporation (“SLM Corp.”), a parent holding company that continued the SLMA’s operations during the transition period and after the SLMA’s dissolution.

26. The SLMA, and its parent the SLM Corp., wanted to change its business to include loan origination and lending. Beginning in no later than 2002, the SLM Corp. sought to acquire or establish a bank to enable it to operate as a lender, but it was not permitted to do so by the United States Department of the Treasury until after the SLMA’s dissolution.

27. The SLMA and SLM Corp., and its wholly-owned subsidiaries, knew that if they made student loans directly, they could not avail themselves of the exemptions provided to bank lenders, and would be subject to the usury limits imposed by California state law. Rather than comply with California law, the SLMA, and the SLM Corp. and its wholly-owned subsidiaries, circumvented the law by entering into forward purchase agreements with so-called lender partners, to make it appear that the lender was a national bank.

28. The forward purchase agreements included a commitment by the SLMA to purchase a specified dollar volume of loans within a set period of time.

29. One such forward purchase agreement was the ExportSS® Agreement between the SLMA and Stillwater National Bank and Trust Company (the “SLMA-Stillwater Agreement”), located in Stillwater, Oklahoma. See Exhibit (Ex.) A.



1           **C.     The Substance of the SLMA-Stillwater Agreement**

2           30.     The SLMA-Stillwater Agreement became effective July 1, 2002. Ex. A  
3     at 1.

4           31.     The terms of the SLMA-Stillwater Agreement and its implementation  
5     evince that Stillwater was a mere nominee and that the SLMA made the loans and  
6     was the actual lender.

7           32.     Under the SLMA-Stillwater Agreement, the SLMA would originate,  
8     underwrite, market and fund loans for which Stillwater would be identified as the  
9     lender, and which the SLMA would then purchase from Stillwater.

10          33.     The loans encompassed by the SLMA-Stillwater Agreement included  
11     certain private credit student loans, referred to as “Eligible Private Loans,” as  
12     defined in Part II of Attachment H to the Agreement, and subsequent amendments.

13          34.     The SLMA committed to funding and purchasing at least  
14     \$120,000,000.00 in Eligible Private Loans during the initial commitment period,  
15     July 1, 2002 to June 30, 2005, an amount that was subsequently substantially  
16     increased. Ex. A at 36-37.

17          35.     Under the SLMA-Stillwater Agreement, the SLMA would originate  
18     “Private Loans,”<sup>2</sup> as the exclusive agent for Stillwater, and Stillwater agreed not to  
19     create or otherwise participate in any program that competed with the SLMA’s  
20     Signature Education Loan program. Ex. A at 3, 23-24.

21          36.     Loans were funded from a bank account maintained by the SLMA. Ex.  
22     A at 5. Stillwater was required to provide the SLMA with a power of attorney which,  
23     among other things, authorized the SLMA to debit a Stillwater account in order to  
24

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25                 <sup>2</sup> The terms “Private Loan,” or “Private Loans,” as used throughout this  
26     Complaint, refer to and include loans made under the Agreement between the  
27     SLMA (and its successors) and Stillwater that are not federal loans, nor guaranteed  
28     or insured by any government entity, and include Signature Loans, CEC Signature  
Loans (also referred to as CEC Private Loans), and CEC Recourse Loans.

1 fund all loan disbursements and other payments. Ex. A at 5, 57. The SLMA  
2 disbursed the loan funds and sent a disbursement roster to the schools. Ex. A at 6.

3 37. Stillwater sold and the SLMA purchased 100% of the Eligible Private  
4 Loans within 90 days of disbursement.

5 38. The SLMA-Stillwater Agreement specified the loans would be sold to  
6 the SLMA for principal, plus accrued interest, and less the amount paid or payable  
7 to insure the loans. Ex. A at 25. In other words, the SLMA purchased the loans at  
8 cost. Stillwater received no premium from selling or transferring the loans, as would  
9 be expected if Stillwater had been the original lender or had actually made the  
10 loans.

11 39. The SLMA paid Stillwater for the use of its charter by permitting  
12 Stillwater to receive interest on the funded loans for 90 days.

13 40. Stillwater did not have any risk of loss with respect to the loans  
14 because, *inter alia*, the SLMA provided the funds for the loans and agreed in  
15 advance to purchase the loans from Stillwater, and Stillwater was the beneficiary of  
16 the insurance on the loans for the period preceding their transfer to the SLMA. See  
17 Ex. A at 19, 36-37, 65. In fact, the SLMA agreed to and did purchase loans of  
18 borrowers who died or became disabled while still nominally owned by Stillwater.

19 41. The SLMA controlled all aspects of marketing loans to student  
20 borrowers, and required Stillwater to “print, package and distribute... Application  
21 Materials in forms acceptable to [the SLMA],” based on “a design template for such  
22 materials” provided by the SLMA. Stillwater was not allowed to alter the content or  
23 description of Application Materials without the SLMA’s express written consent.  
24 Ex. A at 13. Stillwater’s role was to add its “name, state, logo and OE number,” to  
25 the applications, which made it appear as if Stillwater was the lender.

26 42. Among other things, the SLMA: set the terms of the Private Loans;  
27 controlled the schools at which the loans could be made; determined which students  
28 would be approved for loans and for what amounts; and determined the interest

1 rate on a borrower's loan based on proprietary credit criteria established by the  
2 SLMA. Ex A at 3-4, 64-66, 70-73, 79-82.

3 43. When the SLMA was dissolved in 2004 and merged into the SLM  
4 Corp., the SLMA-Stillwater Agreement was amended, and the SLMA's role was  
5 assigned to two wholly-owned subsidiaries of the SLM Corp., the SLM Education  
6 Credit and Finance Corporation ("SLM ECFC"), and Sallie Mae, Inc. ("SMI").

7 **D. The SLMA Establishes a Securitization Program to Raise Funds to**  
8 **Make Loans**

9 44. The SLMA, and its parent and successor entity SLM Corp., obtained  
10 the funds to make loans through a securitization program, which raised funds by  
11 selling interest-bearing notes to investors.

12 45. At a meeting on July 25, 2002, the SLM Corp.'s Board of Directors  
13 authorized the SLM Corp. or its subsidiaries to establish one or more subsidiary  
14 corporations or limited liability corporations by which to securitize private loans.

15 46. Thereafter, the SLM Corp. and its subsidiaries established one or more  
16 "SLM Private Credit Student Loan Trust" each year ("SLM Private Credit Trust"  
17 or "SLM Private Credit Trusts"). The SLM Private Credit Trusts issued and sold  
18 notes to investors, with each Trust raising more than \$1 billion. The funds were  
19 used to make private loans through the SLMA's forward purchase commitments.

20 47. The SLM Private Credit Trusts do not take physical possession of the  
21 promissory notes. The promissory notes remain in the possession and custody of  
22 NSI.

23 48. Plaintiffs' Private Loans were transferred from the SLMA (and after it  
24 was dissolved, from SLM ECFC) to various SLM Private Credit Trusts.  
25  
26  
27  
28

**E. Private Loans Made Under the SLMA-Stillwater Agreement Are Subject to and Not Exempt From California's Usury Law**

49. The contracts used to make Private Loans under the SLMA-Stillwater Agreement consisted of a one page application, and a corresponding promissory note.<sup>3</sup>

50. All of the applications identified Stillwater National Bank, Stillwater, Oklahoma as the "Lender," and all the promissory notes stated that the loan was subject to the laws of the state where the lender was located.

51. Plaintiffs were provided disclosure notices that identified Stillwater as the lender.

52. Notwithstanding the form of the transaction, the substance of the transaction was that the SLMA was the actual lender that made Plaintiffs' loans, not Stillwater. Plaintiffs' loans are thus subject to the California usury limit of 10% per annum because under California law the substance, not the form of a transaction determines whether it is subject to the Usury Law.

**F. The Loans Are Not Subject to National Bank Act Preemption**

53. The National Bank Act ("NBA"), 12 U.S.C. § 85 provides that loans made by a national bank are subject to the interest rates of the home state of the national bank, regardless of where the loans were made, and preempts other states' usury laws.

54. The Private Loans of Plaintiffs and the Class are not subject to the preemption provision of the NBA because the loans were not made by Stillwater, or any other national bank. Instead, under the terms of the SLMA-Stillwater Agreement, and as implemented, the loans were made by the SLMA, and later by SLM ECFC and other SLM Corp. subsidiaries.

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<sup>3</sup> An exemplary application page and corresponding promissory note are attached as Ex. B.

**G. The Department of the Treasury’s Draft Report Determined the  
SLMA Originated Student Loans**

55. In 2011, the Office of Sallie Mae Oversight (“OSMO”) of the U.S. Department of the Treasury first published on its website a draft report dated March 2006 and entitled, “Lessons Learned from the Privatization of Sallie Mae” (“OSMO Draft Report”). The OSMO Draft Report examined in detail the true role of the SLMA in making loans.

56. The Draft Report explained that the SLMA had viewed its “wind down as an opportunity to reinvent its business ... to a vertically integrated company that originated loans for itself (and thereby controlled its acquisition costs)...” Ex. C at p. 5 (footnote omitted). However, because the SLMA was not a bank, it used so-called lender partner banks, such as Stillwater, to make it appear as if the loans were made by a national bank. Notwithstanding the form of these transactions, the Draft Report stated:

Based on its examination of SLMA’s relationship with its funding bank partners, OSMO concluded that SLMA, in substance, was originating certain private loans. The funding banks did not take long-term possession of the notes signed by the student borrowers, nor did they assume the credit risk associated with the notes. The GSE [SLMA] unconditionally purchased the notes, generally within a month, even in case of the borrower’s death. Further, the economic substance of the payments by SLMA to the funding banks reflected loan origination via a “storefront” rather than second market activity.

Ex. C at 15 (footnote omitted).

57. The OSMO Draft Report further explained, “[i]n a true secondary market, a bank would sell its asset into the secondary market (i.e., to Sallie Mae) at its fair value. However, in practice that was not how these loans ‘sold’ to Sallie Mae

1 were priced.” Ex. C at 15, n. 199. Instead, “[t]he loans were sold to Sallie Mae by its  
 2 ‘storefront banks’ at cost plus interest during the holding period rather than at fair  
 3 value. This was, in effect, origination by SLMA.” *Id.*

4 58. As part of its new origination business, the SLMA and its affiliated  
 5 entities expanded into so-called “trade school loans” and other private loans, raising  
 6 billions of dollars through securitization to make loans available to students  
 7 attending for-profit schools. By 2004, when the SLMA was dissolved and merged  
 8 into the SLM Corp., the SLM Corp. was managing \$12 billion in private loans. Ex.  
 9 C at 10-11.

#### 10 **H. NSI Charges and Receives Usurious Interest**

11 59. The Private Loans of Plaintiffs and the Class accrue interest from the  
 12 date funds are disbursed until the loans are re-paid in full. Interest is charged at a  
 13 “Variable Rate,” which is determined by adding a fixed percentage set at the time  
 14 the funds are disbursed (the “Margin”), to the prime rate.

15 60. The Variable Rate is defined as:  
 16 the annual rate equal to the sum of the highest Prime Rate published in The  
 17 Wall Street Journal Credit Markets’ section, “Money Rates” table on the  
 18 fifteenth day of the last month of the quarter prior to [the] loan’s  
 19 disbursement or Change Date (the “Current Index”) plus or minus the  
 20 percentage as identified on my Disclosure Statement, which is hereby  
 21 incorporated into this Note, per annum (the “Margin”) and rounded to the  
 22 nearest one-eighth (0.125) of one percent. (For example, the Variable Rate  
 23 for each quarter beginning January 1st will be determined by the applicable  
 24 Prime Rate published on the preceding December 15th.) The Margin is  
 25 based on my school, credit history and co-borrower-s credit history. Once  
 26 set, the Margin does not change. The actual interest rate during the quarter  
 27 in which my loan is disbursed will be on my Disclosure Statement.

28 Ex. B at 2, Sec. C.2.

1           61. Thus, in any given quarter, NSI charges interest on the Private Loans  
2 of Plaintiffs and the Class at a rate equal to the (variable) Prime Rate *plus* the (fixed)  
3 Margin.

4           62. Borrowers were not told the Margin (or the resulting interest rate) when  
5 they applied for a loan, or even when they were notified their application had been  
6 approved. Borrowers were first told the interest rate they were being charged when  
7 they were notified the loan funds had been or were being disbursed.

8           63. Since Plaintiffs obtained their loans, the Prime Rate has ranged  
9 between 3.25% and 8.25%. See historical data for the Prime Rate, available at  
10 <http://www.federalreserve.gov/releases/h15/data.htm>. The Prime Rate published in  
11 the Wall Street Journal also ranged between 3.25% and 8.25% during the Class  
12 Period.

13           64. The fixed Margin for Plaintiffs' loans is 9.85%.

14           65. NSI charged interest exceeding 10% per annum on Plaintiffs' loans. In  
15 fact, the interest on their loans has been as high as 18.125% per annum, and the  
16 interest on the loans of Beechum and Hart has never been below 13.125% per  
17 annum.

18           66. NSI has charged, or charges, interest at a rate exceeding 10% per  
19 annum to numerous student borrowers who have Private Loans.

20           67. NSI received millions of dollars of interest on Private Loans of the  
21 Class that was charged at a rate exceeding 10% per annum.

22           **I. NSI Benefits From the Usurious Interest**

23           68. NSI has an agreement with each of the SLM Private Credit Trusts to  
24 service the Trusts' loans. NSI pays itself a monthly fee for servicing the loans based  
25 on the outstanding principal balance of the loans held by the trust. The monthly fee  
26 is 1/12 (not to exceed 0.007%) of the sum of the outstanding principal of the loans  
27 held by each trust.  
28



69. NSI benefits from the usurious interest charged and paid by Plaintiffs and members of the Class because higher interest results in the outstanding principal being reduced more slowly. As a consequence, the higher the rate of interest, the more NSI is paid in fees.

**J. NSI Exercises Control Over and Has a Beneficial Interest in the Plaintiffs' and Class Members' Private Loans**

70. NSI also acts as administrator of the SLM Private Credit Trusts.

71. NSI is authorized under certain circumstances to transfer loans out of the SLM Private Credit Trusts and substitute other loans in their place.

72. NSI is able to and does exercise control over the rate of interest. For example, NSI offers a temporary rate reduction program to certain borrowers reducing the interest rate for a limited period of time.

73. NSI, or a related entity, is also the beneficiary of the insurance on Plaintiffs' and Class members' Private Loans, not the SLM Private Credit Trusts.

**V. REPRESENTATIVE PLAINTIFFS AND THE CLASS**

**A. Plaintiffs' Loans**

74. Plaintiff **Jamie Beechum** applied for and obtained a Private Loan in 2004 to pay for the cost of her education at Brooks Institute of Photography.

75. The interest rate is 9.85% *plus* the prime rate, and thus currently is 13.125%.

76. Plaintiff Beechum's loan was assigned to the SLMA or SLM ECFC shortly after disbursement. Thereafter, the SLMA or SLM ECFC either directly or through intermediaries transferred the loan to a SLM Private Credit Student Loan Trust.

77. NSI has serviced Plaintiff Beechum's Private Loan since its inception.

78. Plaintiff **Jeannie Hart** applied for and obtained a Private Loan in 2002 to pay for the cost of her education at Brooks College.



1           79.    The interest rate is 9.85% *plus* the prime rate, and thus currently is  
2   13.125%.

3           80.    Plaintiff Hart's loan was assigned to the SLMA shortly after  
4   disbursement. Thereafter, the SLMA either directly or through intermediaries  
5   transferred the loan to a SLM Private Credit Student Loan Trust.

6           81.    NSI has serviced Plaintiff Hart's Private Loan since its inception.

7           82.    **Plaintiff Monica Hervey** applied for and obtained Private Loans in  
8   2003 and in 2004 to pay for the cost of her education at Brooks Institute of  
9   Photography.

10          83.    Plaintiff Hervey's outstanding loans are currently part of NSI's  
11   temporary rate reduction program. Her enrollment in the program expires in  
12   October 2016, at which time the interest rate will again be above 10% - unless the  
13   rate reduction program continues and NSI accepts her into the program for another  
14   year.

15          84.    Plaintiff Hervey's loans were assigned to the SLMA or SLM ECFC  
16   shortly after disbursement. Thereafter, the SLMA or SLM ECFC either directly or  
17   through intermediaries transferred the loans to one or more SLM Private Credit  
18   Student Loan Trusts.

19          85.    NSI has serviced Plaintiff Hervey's Private Loans since their inception.

20          **B.    The Private Loans Are the Same in All Material Respects.**

21          86.    Like all other borrowers who were provided Private Loans as to which  
22   Stillwater was identified as the lender, Plaintiffs received a standard form  
23   application page and promissory note. Ex. B. This promissory note could not be  
24   modified or otherwise negotiated by Plaintiffs or other borrowers since it was  
25   offered solely on a "take it or leave it" basis, and included statements such as "THIS  
26   IS A NON-NEGOTIABLE CONSUMER NOTE." See e.g. Ex. B at 4.

27          87.    Plaintiffs' promissory notes, like the promissory notes for all other  
28   Private Loans, included an assignment clause providing, "If this Note is assigned,

1 the Assignee will become the owner of this Note and will have all your rights to  
2 enforce this Note against me [the borrower]" and "I may not assign this Note or any  
3 of its benefits or obligations. You may assign this Note at any time." See Ex. B at 3,  
4 Sec. L, 10.

5 88. Plaintiffs' promissory notes, like the promissory notes for all other  
6 Private Loans, included a promise to pay providing that "I will make consecutive  
7 monthly payments during the Repayment Period in the amounts and on or before  
8 the payment due dates shown on my statements until I have paid all of the principal  
9 and interest and any other charges I may owe on this Note." See Ex. B at 2, Sec. D,  
10 3.

11 89. Plaintiffs' promissory notes, like all other promissory notes for Private  
12 Loans, provided that the interest would be determined at a variable rate. Ex. B at 2,  
13 Sec. C, 2.

14 90. Plaintiffs' promissory notes, like the promissory notes for all other  
15 Private Loans, provided that the interest rate would be determined on a quarterly  
16 basis. Ex. B at 2, Sec. C, 2.

17 91. Plaintiffs' promissory notes, like the promissory notes for all other  
18 Private Loans, provided that accrued interest that was not paid would be  
19 capitalized, *i.e.*, added to the loan principal, and interest would then be charged on  
20 the increased principal. Ex. B at 2.

21 92. As with other borrowers who were provided Private Loans, Plaintiffs  
22 received standard disclosure forms advising them of their margins and the  
23 supplemental fee.

24 93. Plaintiffs paid interest that had been charged at a rate of more than 10%  
25 per annum on multiple occasions.

26 94. On at least one occasion each of the Plaintiffs did not pay accrued  
27 interest that had been charged at a rate exceeding 10% per annum, and such interest  
28

1 was capitalized (*i.e.*, added to the outstanding principal of the loan). Thereafter, NSI  
2 charged Plaintiffs interest on the interest that had been capitalized.

3 95. Plaintiffs, like all Class members who were provided Private Loans, did  
4 not know, or have reason to know, that the loans were subject to California law.

5 96. Neither the SLMA, NSI, nor Stillwater disclosed to Plaintiffs, the Class,  
6 or the public, the facts evincing that the substance of the transactions was that the  
7 Private Loans had been made by the SLMA and its successors, and not Stillwater.  
8 These facts included that the SLMA dictated the terms of the loans; that the SLMA,  
9 not Stillwater, funded and disbursed the loans; that Stillwater and the SLMA had  
10 agreed in advance that Stillwater would sell loans to the SLMA at cost within 90  
11 days of disbursement; and, that Stillwater bore no risk of loss on the loans.

12 97. The SLMA and NSI fraudulently concealed from Plaintiffs and the  
13 Class the facts giving rise to their claims by affirmatively misrepresenting on their  
14 loan applications and other documents that the lender who made their loans was  
15 Stillwater, and thereby intentionally prevented Plaintiffs and members of the Class  
16 from filing suit.

17 98. The promissory notes and related documents provided Plaintiffs and  
18 the Class were replete with disclosures and other provisions represented as being  
19 required by law. Accordingly, Plaintiffs and the Class had no reason to believe that  
20 the SLMA or its successors or NSI, would fail to comply with applicable law  
21 regarding the interest rate, and reasonably trusted and relied on NSI to charge  
22 interest in accordance with the law.

23 99. Plaintiffs and Class members did not consent to pay usurious interest,  
24 nor could they have consented to do so, because when they made payments they  
25 were unaware they were being charged interest at a usurious rate.

## 26 VI. CLASS ACTION ALLEGATIONS

27 100. This action asserts claims pursuant to Federal Rules of Civil Procedure  
28 23(a), and 23(b).

1        101. Plaintiffs bring claims on behalf of themselves and a Class defined as:  
 2        All persons who obtained a Signature Loan, a CEC Signature Loan, or a  
 3        CEC Recourse Loan with a loan application that identified Stillwater  
 4        National Bank as the lender and listed California as the residence of the  
 5        borrower, and who were charged interest at an annual rate of more than  
 6        10% for any quarterly period, and whose loan is outstanding or was paid  
 off within four years of the filing of this action.

7        102.        The Class is subject to the following exclusions:

8        a. Officers, directors, managerial employees of NSI and its parent and the  
 9        parent's subsidiaries and their immediate families, and any of the judges of the  
 10       court before which this case is pending and their immediate families;

11       b. Officers, directors, managerial employees of Stillwater and its parent  
 12       and the parent's subsidiaries and their immediate families;

13       c. All Signature Loans, CEC Signature Loans and CEC Recourse Loans  
 14       that were made with a promissory note that includes an arbitration clause or class  
 15       action waiver.

16       **A.     The Class**

17       103. There are thousands of members in the Class who are geographically  
 18       dispersed throughout California. Therefore, individual joinder of all members of  
 19       the Class would be impracticable.

20       104. Common questions of law or fact exist as to all members of the Class.  
 21       These questions predominate over the questions affecting only individual Class  
 22       members. For the Class, these common legal or factual questions include, but are  
 23       not limited to:

24       a. Whether under California law, the substance of the transaction was that  
 25       the actual lender who made the loans under the SLMA-Stillwater Agreement was  
 26       the SLMA and its successors;

27       b. Whether the loans are subject to the California usury limit of 10% per  
 28       annum;

- c. Whether NSI charged interest on Private Loans at rates exceeding 10% per annum;
- d. Whether under the National Bank Act, the actual lender who made the loans under the SLMA-Stillwater Agreement was the SLMA and its successors;
- e. Whether the loans are not subject to the interest preemption provision of the National Bank Act;
- f. Whether NSI's conduct violated California's Unfair Competition Law, California Business and Professions Code §§ 17200, *et seq.*;
- g. Whether NSI is liable for violations of the California Usury Law;
- h. Whether NSI is liable for conversion;
- i. The appropriate measure of damages; and
- j. The appropriate scope of injunctive relief.

105. Plaintiffs' claims are typical of the claims of the Class, in that Plaintiffs were charged and paid interest at a rate exceeding 10% per annum on their Private Loans, and their loans were made in California. Plaintiffs, therefore, are not materially different in relevant respects from other Class members, and the relief sought is common to the Class.

106. Plaintiffs are adequate representatives of the Class because their interests do not conflict with the interests of the other Class members, and they have retained competent counsel experienced in conducting complex lending and class action litigation. Plaintiffs and their counsel will adequately protect the interests of the Class.

107. A class action is superior to other available means for the fair and efficient adjudication of this dispute. The damages suffered by individual Class member likely will be small by comparison to the burden and expense of the complex litigation necessitated by Defendants' wrongful conduct. Thus, it would be virtually impossible for Class members to obtain redress on an individual basis.

1 Additionally, class-wide litigation is preferable because individualized actions could  
2 lead to inconsistent or contradictory judgments.

3 108. A class action also presents far fewer management difficulties, and  
4 provides the benefits of single adjudication, including economies of scale, and  
5 comprehensive supervision by a single court. In the alternative, the Class may be  
6 certified because Defendants have acted or refused to act on grounds generally  
7 applicable to the members of the Class, thereby making appropriate preliminary  
8 and final equitable relief with respect to the Class.

9 109. Upon information and belief, all records concerning each of the Private  
10 Loans entered into by members of the Class are in the possession or control of NSI  
11 and available through discovery.

## 12 13 VII. CLAIMS FOR RELIEF

### 14 A. First Claim for Relief – “Unlawful” Business Practices in Violation of 15 The Unfair Competition Law, Bus. & Prof. Code §§ 17200, *Et Seq.*

16 110. Plaintiffs incorporate paragraphs 1-109 as if fully stated here.

17 111. This claim is brought on behalf of Plaintiffs and the Class.

18 112. The Unfair Competition Law (“UCL”), California Business and  
19 Professions Code §§ 17200, *et seq.*, defines unfair business competition to include  
20 any “unlawful, unfair or fraudulent” act or practice.

21 113. A business act or practice is “unlawful” if it violates any established  
22 state or federal law.

23 114. Article XV of the California Constitution sets a maximum legal rate of  
24 10% per annum for interest charged on loans for educational expenses such as the  
25 Private Loans. In pertinent part, it states:

26 Section 1. The rate of interest upon the loan or forbearance of any  
27 money, goods, or things in action, or on accounts after demand, shall be 7  
28 percent per annum but it shall be competent for the parties to any loan or

1 forbearance of any money, goods or things in action to contract in writing  
2 for a rate of interest:

3 (1) For any loan or forbearance of any money, goods, or things  
4 in action, if the money, goods, or things in action are for use  
5 primarily for personal, family, or household purposes, at a rate not  
6 exceeding 10 percent per annum....

7 115. The Private Loans are loans of money primarily for personal, family, or  
8 household purposes subject to Cal. Const., art. XV, § 1(1).

9 116. The Private Loans are loans of money expressed “in writing” within the  
10 meaning of the Usury Law. Cal. Civ. Code § 1916-1.

11 117. The 10% interest rate limit set forth in Cal. Const., art. XV, § 1(1) and  
12 the Usury Law apply to the Private Loans, and such loans are not subject to any of  
13 the exemptions from the Usury Law.

14 118. The loans were not made by a national bank within the meaning of the  
15 National Bank Act, 12 U.S.C. §§ 85 and 86.

16 119. NSI has charged interest on the Private Loans at a rate exceeding 10 %  
17 per annum and thus exceeding the legal limit.

18 120. The interest charged at a usurious rate that was not paid was  
19 capitalized (*i.e.*, added to the outstanding principal).

20 121. Defendant NSI has violated and continues to violate, the “unlawful”  
21 prong of the UCL by charging borrowers interest in violation of California’s  
22 Constitution, art. XV, § 1(1), and the Usury Law. By committing the acts and  
23 practices alleged above, Defendant has engaged, and continue to be engaged, in  
24 unlawful business practices within the meaning of California Business and  
25 Professions Code §§ 17200, *et seq.*

26 122. Through its unlawful acts and practices Defendant NSI has obtained,  
27 and continues to unfairly obtain, money from Plaintiffs and the Class. As such,  
28 Plaintiffs requests on behalf of themselves and the Class the relief set forth in the

1 Prayer, including that this Court enjoin Defendant from continuing to violate the  
 2 Unfair Competition Law as discussed herein. Otherwise, the Class may be  
 3 irreparably harmed and/or denied an effective and complete remedy.

4 **B. Second Claim for Relief – “Unfair” Business Practice in Violation of**  
 5 **the Unfair Competition Law, Bus. & Prof. Code §§ 17200, *Et Seq.***

6 123. Plaintiffs incorporate paragraphs 1-109 as if fully stated here.

7 124. This claim is brought on behalf of Plaintiffs and the Class.

8 125. A business act or practice is “unfair” under the UCL if the reasons,  
 9 justifications and motives of the alleged wrongdoer are outweighed by the gravity of  
 10 the harm to the alleged victims.

11 126. Defendant NSI has and continues to violate the “unfair” prong of the  
 12 UCL through its assessment of interest at a rate exceeding 10% per annum on the  
 13 Private Loans.

14 127. Defendant NSI’s assessment of interest at rates exceeding 10% per  
 15 annum violates the “unfair” prong of the UCL because it is not entitled to charge  
 16 such interest, and such interest is excessive and not justified by any business need,  
 17 and creates an onerous burden on Plaintiffs and the Class.

18 128. The gravity of the harm to Plaintiffs and the Class resulting from such  
 19 unfair acts and practices outweighs any conceivable reasons, justifications and/or  
 20 motives for Defendant’s conduct. By committing the acts and practices described  
 21 above, Defendant has engaged, and continues to be engaged, in unfair business  
 22 practices within the meaning of California Business and Professions Code §§ 17200,  
 23 *et seq.*

24 129. Through unfair acts and practices Defendant NSI has obtained, and  
 25 continues to obtain, money from Plaintiffs and the Class. As such, Plaintiffs request  
 26 on behalf of themselves and the Class the relief set forth in the Prayer, including  
 27 that the Court enjoin Defendant NSI from continuing to violate the UCL.  
 28



1 Otherwise, the Class may be irreparably harmed and/or denied an effective and  
 2 complete remedy.

3 **C. Third Claim for Relief – Usury in Violation of Article XV, Section 1,**  
 4 **of the California Constitution**

5 130. Plaintiffs incorporate paragraphs 1-109 as if fully stated here.

6 131. This claim is brought on behalf of Plaintiffs and the Class.

7 132. Under the California Constitution, the maximum rate of interest for  
 8 any loan, if the money, goods, or things in action are for use primarily for personal,  
 9 family, or household purposes, is 10 % per annum. Cal. Const., art. XV, § 1(1).

10 133. The Private Loans are “loans” for “money” for use “primarily for  
 11 personal, family, or household purposes,” within the meaning of the California  
 12 Constitution, art. XV, § 1(1).

13 134. The Private Loans are subject to the California Usury Law and are not  
 14 excluded or otherwise exempt from the constitutional proscription on usury.

15 135. Defendant NSI charged Plaintiffs and all members of the Class interest  
 16 exceeding the lawful statutory maximum rate of 10% per annum.

17 136. The Private Loans and interest thereon are absolutely repayable.

18 137. Through usurious charges, Defendant NSI has received, and continues  
 19 to receive, money from Plaintiffs and the Class in violation of the California  
 20 Constitution. As such, Plaintiffs request on behalf of themselves and the Class the  
 21 relief set forth in the Prayer, including that this Court enter an order refunding all  
 22 interest paid that was charged at a usurious rate, or directing it to be applied to  
 23 principal, cancelling interest that was charged at a rate exceeding 10% per annum  
 24 that remains outstanding, or that was capitalized, as well as interest that was  
 25 charged on the capitalized usurious interest, and limiting any future interest to not  
 26 more than 10% per annum. Plaintiffs also request that this Court award any other  
 27 relief that is just and proper.  
 28

1           **D.    Fourth Claim for Relief – Violation of the Usury Law**

2           138. Plaintiffs incorporate paragraphs 1-109 as if fully stated here.

3           139. This claim is brought on behalf of Plaintiffs and the Class.

4           140. California’s statutory proscription against usury is set forth in the  
5 Usury Law, an un-codified Initiative Measure adopted nearly 100 years ago. See  
6 Cal. Civ. Code § 1916-1 through 1916-3.

7           141. The Usury Law provides in part:

8           The rate of interest upon the loan or forbearance of any money, goods  
9 or things in action or on accounts after demand or judgments rendered in  
10 any court of this state, shall be seven dollars upon the one hundred dollars  
11 for one year and at that rate for a greater or less sum or for a longer or a  
12 shorter time; but it shall be competent for parties to contract for the  
13 payment and receipt of a rate of interest not exceeding twelve dollars on the  
14 one hundred dollars for one year and not exceeding that rate for a greater or  
15 less sum or for a longer or shorter time, in which case such rate exceeding  
16 seven dollars on one hundred dollars shall be clearly expressed in writing.

17           Cal. Civ. Code § 1916-1.

18           142. As recognized in *Penziner v. West American Finance Co.*, 10 Cal. 2d  
19 160, 174, 74 P.2d 252 (Cal. 1937), the 12% interest rate established by the Usury Law  
20 for contracts in writing was amended to 10% by adoption of the usury provisions of  
21 the California Constitution.

22           143. Private Loans are “loans” for “money” expressed “in writing” within  
23 the meaning of the Usury Law. The loans are not excluded or otherwise exempt  
24 from the Usury Law.

25           144. Defendant NSI charged Plaintiffs and Class members interest  
26 exceeding 10% per annum.

1           145. The counterparty to the contract willfully intended to enter these  
2 transactions and to charge and receive interest charged at a rate exceeding 10% per  
3 annum.

4           146. Through usurious charges, Defendant has received, and continues to  
5 receive, money from Plaintiffs and the Class in violation of the Usury Law, as  
6 amended. As such, Plaintiffs request on behalf of themselves and the Class the relief  
7 set forth in the Prayer, including an award of three times the interest paid on the  
8 Private Loans as provided by the Usury Law, and an order canceling all future  
9 interest on the Private Loans exceeding 10% per annum. Cal. Civ. Code § 1916-3(a).

10           **E. Fifth Claim for Relief – Claim For Money Had and Received**

11           147. Plaintiffs incorporate paragraphs 1-109 as if fully stated here.

12           148. This claim is brought on behalf of Plaintiffs and the Class.

13           149. Defendant NSI is indebted to Plaintiffs and the Class members.

14           150. Defendant NSI received money belonging to Plaintiffs and the Class  
15 that should have been used for their benefit by reducing the outstanding principal  
16 on their loans.

17           151. The money was not used for the benefit of Plaintiffs or the Class.

18           152. The money was instead used by Defendant to pay interest that was  
19 charged at a usurious rate.

20           153. Defendant has not returned any money to Plaintiffs or the Class, nor  
21 has Defendant applied the money to principal for the benefit of the Plaintiffs or the  
22 Class.

23           154. As a matter of equity and good conscience, the money should be  
24 returned to Plaintiffs and the Class or be used for their benefit by applying it to the  
25 payment of the principal of their respective loans.

26           **F. Sixth Claim For Relief - Conversion**

27           155. Plaintiffs incorporates paragraphs 1-109 as if fully stated here.

28           156. This claim is brought on behalf of Plaintiffs and the Class.

1           157. Defendant NSI wrongfully took, and misappropriated, payments of  
2 interest that had been charged at a rate exceeding 10% per annum from Plaintiffs  
3 and the Class.

4           158. Plaintiffs and Class members were the proper owners of the interest  
5 payments wrongfully taken by Defendant at the time of the taking.

6           159. Plaintiffs and Class members were damaged as a result of the wrongful  
7 taking of the interest charged at a rate exceeding 10% per annum. The specific sums  
8 in which Plaintiffs and Class members were damaged are capable of identification  
9 using Defendant NSI's records.

10  
11 **VIII. PRAYER**

12           WHEREFORE, Plaintiffs, on behalf of themselves and the Class, request an  
13 award and relief as follows:

14           **A.** An order certifying that this action is properly brought and may be  
15 maintained as a class action, that Plaintiffs be appointed Class Representatives for  
16 the Class, and that Plaintiffs' counsel be appointed Class Counsel.

17           **B.** Restitution in an amount to be determined.

18           **C.** An order refunding all interest paid that was charged at a rate  
19 exceeding 10% per annum, or directing that it be applied to principal.

20           **D.** An order cancelling all interest that was charged at a rate exceeding  
21 10% per annum that was not paid, including interest that was charged at a rate  
22 exceeding 10% per annum that was capitalized, and interest charged on that  
23 capitalized interest.

24           **E.** An order awarding three times the interest paid by Plaintiffs and Class  
25 members within one year of filing suit, and thereafter, which was charged at a  
26 usurious rate or, alternatively, three times the amount of interest paid on Private  
27 Loans exceeding the 10% per annum legal limit.

28           **F.** Damages as permitted under California law.

1           **G.**     An order enjoining interest being charged at a rate exceeding 10% per  
2 annum on Plaintiffs' and Class members' Private Loans.

3           **H.**     An order awarding Plaintiffs' their costs of suit, including reasonable  
4 attorneys' fees and pre- and post-judgment interest.

5           **I.**     Such other and further relief as may be deemed necessary or  
6 appropriate.

7  
8 **IX. DEMAND FOR JURY TRIAL**

9           Plaintiffs hereby demand a trial by jury on all claims and/or issues so triable.

10  
11 DATED: October 21, 2015

By: /s/ William J. Genego